

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>BRENTEN LAVELLE and ROBIN LAVELLE,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA, UNITED STATES FOREST SERVICE, an agency within the Department of Agriculture,</p> <p>Defendants.</p>	<p>File No. <u>23-cv-5070</u></p> <p>COMPLAINT</p>
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COME NOW the Plaintiffs, Brenten Lavelle and Robin Lavelle, by and through their undersigned counsel, and for their cause of action against the Defendants, the United States of America and the United States Forest Service, an agency within the Department of Agriculture, state and allege as follows:

1) This case involves an easement granted to the United States of America, and more specifically, the Forest Service, Department of Agriculture on or about July 2, 1976, in Lawrence County, South Dakota.

2) The Plaintiffs, Brenten Lavelle and Robin Lavelle, are owners of real property in Lawrence County, South Dakota, legally described as follows:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 T6N R1E of the Black Hills Meridian and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 T6N R1E, of the Black Hills Meridian, Lawrence County, South Dakota.

3) On or about July 2, 1976, John Richard Miller and D. Jean Miller granted to “The United States of America” “an easement sixty-six (66) feet in

width for a road, with as such additional width as required to accommodate and adequately protect cuts and fills, over and across the following described lands in the County of Lawrence, State of South Dakota:

T.6N., R.1E., BHM

Section 7: SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 8: SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 17: W $\frac{1}{2}$ NW $\frac{1}{4}$

Section 18: SE $\frac{1}{4}$ NE $\frac{1}{4}$

A true and correct copy of the Easement is attached hereto as Exhibit 1.

4) Under the terms of the Easement, the Easement is not designated as a public easement or “public right of way”.

5) Further, under the terms of the Easement, “[i]f for a period of five (5) years the Grantee shall cease to use or preserve for prospective future use, the road, or any segment thereof or if at any time the Regional Forester determines that the road, or any segment thereof, is no longer needed, the easement traversed thereby shall terminate.”

6) Despite no reference in the Easement to the road as a public easement or public right of way, the Defendants have asserted that “[t]he United States of America was the Grantee of three separate rights-of-way Easements on portions of Bear Ridge Road, National Forest System Road 131, 131.1, and 131.2 in the County of Lawrence, Sections 7, 8, 17, and 18, T6N, R1E, BHM, South Dakota.”

7) Despite the fact that the Defendants have not maintained or preserved the road for more than five (5) years, or at least that portion or segment of the road which traverses the Plaintiffs’ property, the Defendants have asserted that

“[t]he Forest Service has been maintaining these roads commensurate with National Forest management activities, with the last maintenance being performed on 5.1 miles of road in 2018.”

8) The Defendants have not maintained any portion or segment of the road which traverses the Plaintiffs’ property for more than five years.

9) The Defendants last alleged maintenance occurred in 2018, approximately five years ago.

10) The Defendants do not allege that that maintenance occurred on the portion or segment of the road which traverses the Plaintiffs’ property.

11) The Defendants allege only that a portion of the “three separate rights-of-way easements”, consisting of 5.1 miles of road, was maintained approximately five years ago.

12) The portion or segment of the Easement that traverses the Plaintiffs’ property is not 5.1 miles long.

13) On or about February 20, 2022, the Plaintiffs, along with others, sent a letter to Mr. Jeff Tomac, Forest Supervisor, detailing the concerns with the road, the position and belief that the Easement is no longer in existence due to the lack of any maintenance, preservation, or care, and the concern that the Easement did not create a public right of way or grant the general public any right or use of the road.

14) On March 15, 2022, Mr. Jeff Tomac, Forest Supervisor, wrote to the Plaintiff, Brenten Lavelle. Despite no indication in the Easement that it was a public easement or public right of way, Mr. Tomac specifically alleged that

“[t]he United States of America was the grantee of three separate rights-of-way Easements on portions of Bear Ridge Road[.]” (emphasis added). Mr. Tomac further asserted that the Forest Service has been “maintaining these roads commensurate with National Forest management activities, with the last maintenance being performed on 5.1 miles of road in 2018.”

15) On March 18, 2022, despite having received no additional communication from the Plaintiffs, or any of the other landowners, the United States Forest Service, in concert with the Lawrence County Sheriff's Office, and potentially other agencies, organized a mass showing of force on the Plaintiffs' property, with numerous different law enforcement vehicles and an unknown number of officers, responding to the Plaintiffs' property, to discuss the Defendants' position with respect to the public nature of Bear Ridge Road.

16) The officers' could not provide any reason or rationale for the show of force (why so many officers were necessary or why the Plaintiffs were not simply invited to the Forest Service Office to discuss the letters); nor had the Plaintiffs done anything to suggest such a show of force was necessary or required.

17) Despite requests for documentation related to the designation of Bear Ridge Road as a public right-of-way, or documentation related to the maintenance, preservation, and care of Bear Ridge Road, as of the date of this Complaint, no such documentation has been received from the Defendants.

18) Despite requests to discuss the status of Bear Ridge Road, the status of the Easement (public right of way vs. easement for Forest Service

use), and the maintenance, liability, and danger of the road, as of the date of this Complaint, the Defendants have not expressed any interest in such a meeting.

19) To the contrary, Lou Conroy, acting District Ranger for the Black Hills National Forest, Northern Hills, emailed the Plaintiff, Brenten Lavelle, to advise him to refrain from contacting any Black Hills National Forest/Northern Hills Ranger District employees (all federal, public employees).

20) Jurisdiction in this Court is appropriate based upon 28 U.S.C. § 1331, 28 U.S.C. § 1346(f), 28 U.S.C. § 2409A, 28 U.S.C. § 2201, and 28 U.S.C. § 1346.

21) Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because all or substantial part of the events giving rise to the claims herein occurred within this judicial district, and the affected lands are located in this judicial district.

22) The Plaintiffs have been injured by the Defendants' actions and will continue to suffer irreparable injury unless there is judicial review. The Defendants, their employees, officers, and agents have sought and will continue to attempt to assert that the United States of America and the United States Forest Service have the right to allow the general public the use of the Easement granted to the United States of America. This controversy is ripe for federal court determination.

QUIET TITLE PURSUANT TO 28 U.S.C. § 2409A

23) Plaintiffs re-allege paragraphs 1 through 22 above, as set forth in their entirety.

24) Within this action, the Plaintiffs seek to quiet title to their land with respect to the easement.

25) The Defendants' actions authorizing and encouraging unrestricted public use of the easement (which was not dedicated or identified as a public easement) are harming and interfering with the Plaintiffs' use and enjoyment of their property.

26) The plain text of the easement is the starting place and controls this Court's determination for understanding the limited rights granted to the Defendants under the easement. The easement was granted by the Plaintiffs' predecessors in interest, John Richard Miller and D. Jean Miller to the Defendants.

27) The Grantors granted to the Defendants, and its assigns, an easement "sixty-six (66) feet in width for a road, with as much additional width as required to accommodate and adequately protect cuts and fills, over and across the following described lands [which included the real property now owned by the Plaintiffs]."

28) The easement does not provide that it is for "public use" or as a "right of way."

29) The easement further provided that "if for a period of five (5) years the Grantee shall cease to sue or preserve for prospective use, the road, or any

segment thereof or if at any time the Regional Forester determines that the road, or any segment thereof, is no longer needed, the easement traversed thereby shall terminate.”

30) The Easement does not place any burden on the landowners (including the Plaintiffs) to manage, maintain, or preserve the road.

31) Plaintiffs are of information and belief that the Defendants have not taken any action to maintain or preserve for prospective future use the segment of the road which traverses over Plaintiffs’ property.

32) Due to the Defendants failure, inability and/or refusal to maintain or preserve the road, the Plaintiffs have been required to purchase equipment, fuel, materials, equipment maintenance, etc. and spend hours of labor and time to maintain and preserve the road.

33) The road winds through an area of the northern Black Hills. The road is not straight, there are blind corners, and cliffs at various points on the road.

34) Without maintenance, the road is a danger to those who use it.

35) The Defendants authorize and encourage unrestricted public use of the road, despite the lack of any maintenance on the road by the Defendants.

36) The Plaintiffs have inquired of the Defendants about the liability for any accidents that may occur on the road, especially in light of the fact that the Plaintiffs have been required to maintain and preserve the road due to the Defendants’ failure, inability and/or refusal to do so.

37) The Defendants have not responded to the Plaintiffs' inquiries or taken any action to maintain or preserve the road.

38) The text of the easement itself is notable in that it grants the easement only to the United States of America and its assigns. There is no grant of this easement for general public use, access, highway purposes, or as a right of way.

39) The easement was expressly granted to the United States of America, as a sovereign governmental entity, and not all unspecified citizens, residents, or occupants of the United States of America. The plain text of the easement contemplated that the easement was to be used solely by agents of the United States, and its express assigned representatives, but within that context that there would be actual assignments from the Defendants to those assignees who are entitled to make use of the easement.

40) The easement text does not permit the Defendants to declare and allow that all members of the public (without limitation or identification) would have the ability to use the easement granted to the Defendants.

41) Despite no language in the easement designating the easement for public use, or as a right-of-way, the Defendants have threatened to arrest the Plaintiff, Brenten Lavelle, if he places a sign on the road to notify the public that the road is private.

42) The Plaintiffs are entitled to an order of this Court quieting title to their land with respect to the easement, and specifically that portion or segment of the easement which traverses the Plaintiffs' property, as follows:

- That the easement has terminated under the terms of the easement document due to the Defendants' failure to maintain or preserve the road;
- If the easement has not been terminated, confirming that the easement may not be utilized by the general public, or as a public right of way, and that it may only be used by the Defendants and/or its specific assignees.

COUNT II – QUIET TITLE PURSUANT TO 28 U.S.C. § 2409A TO CONFIRM AND ENFORCE DEFENDANTS' OBLIGATION TO MAINTAIN AND PRESERVE THE ROAD

43) Plaintiffs re-allege paragraphs 1 through 42 above, as set forth in their entirety.

44) Under the plain text of the easement, the Defendants have an obligation to “preserve for prospective future use, the road, or any segment thereof[.]”

45) Plaintiffs are of information and belief that the Defendants have not taken any action to maintain or preserve for prospective future use the segment of the road which traverses over Plaintiffs' property.

46) Due to the Defendants failure, inability and/or refusal to maintain or preserve the road, the Plaintiffs have been required to purchase equipment, fuel, materials, equipment maintenance, etc. and spend hours of labor and time to maintain and preserve the road.

47) The Defendants authorize and encourage unrestricted public use of the road, despite the lack of any maintenance on the road by the Defendants.

48) The Defendants have an obligation to take affirmative steps to preserve the road for its use.

49) The Defendants authorization of the unrestricted use of the easement by the general public in violation of the easement document further damages the integrity of the road.

50) The Plaintiffs are entitled to an order of this Court quieting title to their land with respect to the easement, and specifically that portion or segment of the easement which traverses the Plaintiffs' property, as follows:

- That the Defendants have an affirmative obligation to maintain and preserve the road;
- That the Plaintiffs have no obligation to maintain and preserve the road, and that the Defendants will keep the road in a safe and useable state, without any further action or commitment by the Plaintiffs; and
- That the Defendants shall be responsible for any liability, injury, or loss that arises from the maintenance, preservation, and safety of the road.

COUNT III – DECLARATORY JUDGMENT

51) Plaintiffs re-allege paragraphs 1 through 50 above, as set forth in their entirety.

52) The Plaintiffs pray for a declaratory judgment from this Court, interpreting the provisions of the easement, and declaring the rights, status, and obligations of the parties as more fully identified above.

WHEREFORE, the Plaintiffs, Brenten Lavelle and Robin Lavelle, hereby respectfully pray for a judgment against the Defendants, United States of America, United States Forest Service, an agency within the Department of Agriculture, as follows:

1) For an order declaring that the easement has terminated under the terms of the easement document due to the Defendants' failure to maintain or preserve the road;

2) For an order quieting title to the Plaintiffs' land with respect to the easement held by the United States, and administered by the United States Forest Service, and declaring that the easement has been terminated, or, in the alternative, that the easement may be utilized only by agents of the United States and its specific, written assignees, and that the road is not to be used for public use or as a public right of way.

3) For an order declaring that the Defendants have an obligation to maintain and preserve the road for future use, as set forth in the easement.

4) For an order declaring that the Plaintiffs have no obligation to maintain and preserve the road, and that the Defendants will keep the road in a safe and useable state, without any further action or commitment by the Plaintiffs.

5) For an order declaring that the Defendants shall be responsible for any liability, injury, or loss that arises from the maintenance, preservation, and safety of the road.

6) For a judgment of attorney's fees and costs incurred by the Plaintiffs to the extent permitted by law, including under the Equal Access to Justice Act, 5 U.S.C. § 2412 (d)(1); and

7) For an order granting such other and further relief as may be just and equitable under the circumstances.

Dated this 20th day of October, 2023.

This Document has been Electronically Filed

/s/ Robert J. Galbraith
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**CONSISTENT WITH THE PROVISIONS OF FED. R. CIV. P. 38(b), THE
DEFENDANTS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES TRIABLE
TO A JURY.**

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS**BRENTEN LAVELLE AND ROBIN LAVELLE****(b)** County of Residence of First Listed Plaintiff Lawrence

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert J. Galbraith, Nooney & Solay, LLP, P.O. Box
8030, Rapid City, SD 57709-8030, (605) 721-5846

DEFENDANTS

UNITED STATES OF AMERICA, U.S. FOREST SERVICE,
an agency within the Department of Agriculture

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Quiet Title Act, 28 U.S.C. § 2409a and 28 U.S.C. § 1346(f)

Brief description of cause:
 Suit to quiet title over easement, seeking equitable relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/23/2023

/s/ Robert J. Galbraith

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____